

PUBLIC Attachment DP-1

Direct Testimony of Don Price

ICC Docket 09-0315

February 22, 2010

Various Public Data Request Responses

ICC DOCKET 09-0315

McLEODUSA TELECOMMUNICATIONS SERVICES INC.'S

NARRATIVE RESPONSES

TO VERIZON'S FIRST SET OF DATA REQUESTS

QUESTIONS 1 THROUGH 31

DECEMBER 8, 2009

8. Does Mr. Starkey contend that McLeodUSA's network more closely resembles the networks of small and/or medium-sized ILECs than the networks of other CLECs? If your answer is anything other than an unqualified "no," please explain.

McLeodUSA Response:

No.

McLeodUSA witness: Michael Starkey

9. Did McLeodUSA conduct any analysis of its customer density in Illinois as compared to that of other CLECs operating within AT&T Illinois' service territory? If your answer is anything other than an unqualified "no," please produce all such analysis.

McLeodUSA Response:

No. McLeodUSA does not have data on customer density of other CLECs.

McLeodUSA witness: Michael Starkey

26. At pages 66-70 of his Direct Testimony, Mr. Starkey discusses the continued validity of the FCC's 2001 *CLEC Access Charge Order*. Please admit or deny that the FCC has not withdrawn, reversed, superseded, vacated or otherwise invalidated its 2001 *CLEC Access Charge Order*.

McLeodUSA Response:

Admit. By its own findings the FCC's *CLEC Access Charge Order* was intended to be temporary in nature and the FCC has, since its issuance of the Order, and continues today, to study the comprehensive issues of inter-carrier compensation (including CLEC access charges) in the context of changing market conditions.

McLeodUSA witness: Michael Starkey

28. If McLeodUSA enters into written service contracts that contain early termination provisions, please (a) identify what percentage of such contracts contain such provisions, and (b) provide a template version of such contracts that contains a representative early termination provision.

McLeodUSA Response:

For purposes of this response, McLeodUSA assumes “early termination provisions” means the type of contract provision described in the response to question 27.

(a) McLeodUSA objects to subpart (a) of this question on the grounds that it would be unduly burdensome for McLeodUSA to review all its customer contracts to calculate what percentage of its contracts contain an “early termination provision”, and that the percentage of McLeodUSA’s customer contracts that contain an “early termination provision” is not relevant to the subject matter of this proceeding.

(b) Attachment VZ-28(b) contains an excerpt from terms and conditions currently used by McLeodUSA which include an “early termination provision” – see Sections 6 and 7.

McLeodUSA witness: None

ATTACHMENT VZ-28(b)
TO McLEODUSA RESPONSES TO
VERIZON'S FIRST SET OF DATA REQUESTS
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own rate schedule. Calls made using any service offered by PAETEC are rounded up to the next cent at the termination of the call. For any PAETEC service used by Customer for which a rate is not specified in the Agreement, PAETEC's standard business rate shall apply.

b) Notwithstanding the foregoing, Customer guarantees to PAETEC payment of a Minimum Monthly Fee in the amount set forth on the first page of the Agreement ("Minimum Monthly Fee"). For each month Customer agrees to pay the greater of (i) the total amount otherwise due for the month for all Services and any Equipment provided under the Agreement, or (ii) the Minimum Monthly Fee. Compliance with the Minimum Monthly Fee shall be based on Customer's Service charges prior to application of any taxes or surcharges.

c) If ten percent (10%) or more of Customer's completed calls are equal to or less than 6 seconds in length ("Short Duration Calls") during any calendar month, PAETEC reserves the right to charge and Customer shall be responsible for payment of a surcharge of \$0.01 per Short Duration Call, which surcharge shall be in addition to the rates and charges for the Services and all other applicable surcharges and taxes. If more than forty percent (40%) of Customer's total call attempts are uncompleted during any given month, per trunk group and DS0 circuit, PAETEC reserves the right to disconnect the affected circuit or to charge Customer \$10 per DS0 per month per trunk group. If applicable, the same metrics will be applied on a session (or DS0 equivalent) basis for SIP based termination Services.

4. TAXES AND SURCHARGES. In addition to the rates and charges for the Service(s), Customer shall be responsible for payment of all local, state and federal taxes, fees and surcharges, however designated, imposed on or based upon the provision, sale, or use of the Services, excluding taxes based on PAETEC'S net income. Customer shall be responsible for the payment of all surcharges in effect from time to time, including but not limited to USF, and payphone surcharges, as required or permitted by applicable law, regulation or tariff ("Price List") and/or as specified on the PAETEC website at <http://www.paetec.com/notice/legalnotice.html>. To the extent a sale is claimed to be subject to a tax exemption, and Customer provides PAETEC with a proper tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said tax exemption, PAETEC agrees to exempt Customer from the collection of taxes to the extent warranted by such certificate(s). Failure to timely provide said certificate will result in no exemption being available to Customer for any period prior to the date that the Customer presents a valid certificate.

5. BILLING AND PAYMENT. Billing for a Service shall commence upon Acceptance (as previously defined). All bills are due and payable upon receipt. If Customer's bill is not paid by the date which is thirty (30) days after the invoice date listed on the bill (the "Due Date"),

Customer also shall pay PAETEC a monthly late charge amount equal to 1.5% of the unpaid balance due (or such lesser amount as is the maximum amount permitted under applicable law). Customer must provide PAETEC with written notice of any disputed charge(s) within ninety (90) days after the invoice date listed on the bill or shall be deemed to have waived its rights to dispute the charges. If the dispute is filed on or before the Due Date for the respective invoice, Customer shall pay the invoiced amount minus the disputed amount by the Due Date. Customer shall have no right to withhold amounts not disputed by the Due Date, *provided that* payment of an invoice shall not be deemed a waiver of Customer's rights to later dispute an invoice within the time period established in this Section. The dispute notice shall set forth in writing in reasonable detail the information concerning the disputed charges and reasons for the dispute. PAETEC and Customer shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is subsequently resolved in favor of PAETEC, Customer shall pay the disputed amount previously withheld within ten (10) days of such resolution, including interest at the rate specified above from the original due date. If the dispute is subsequently resolved in favor of Customer, PAETEC shall issue a credit on Customer's subsequent invoice for the disputed amount. If PAETEC initiates legal proceedings to collect any amount due hereunder and PAETEC substantially prevails in such proceedings then Customer shall pay the reasonable costs and expenses, including but not limited to reasonable attorney fees, expenses, court costs and service charges, incurred by PAETEC in collecting payment and/or in prosecuting such proceedings and any appeals therefrom.

6. TERMINATION.

a) A party may terminate the Agreement on thirty (30) days' written notice if the other party materially breaches the Agreement and such breaching party fails to cure the breach within such notice period, *provided that* the cure period for breach of any of Customer's payment obligations shall only be ten (10) days, or as provided by law.

b) A party may terminate the Agreement upon written notice to the other party if (i) the other party dissolves or becomes insolvent; (ii) the other party makes an assignment for the benefit of creditors; (iii) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (iv) a receiver of the other party is appointed.

c) If Customer (or any Customer affiliate) is in default of the terms of any other agreement between PAETEC (or any PAETEC affiliate) and Customer (or any Customer affiliate), including but not limited to any payment obligation to PAETEC or its affiliates, then PAETEC, at its sole option, may consider such default as a default under this Agreement and provide notice of default in accordance with the terms of this Agreement. Customer

further understands and agrees that any breach by Customer of its obligations under this Agreement shall also be deemed a breach by Customer of its obligations under any other agreements it (or any Customer affiliate) has entered into with PAETEC and/or its affiliates and understands and agrees that any such breach shall authorize PAETEC and/or any of its affiliates to immediately suspend performance under, and or terminate, said agreements with Customer (or Customer's affiliates) for default.

d) In addition to PAETEC's remedies under Section 5 and Section 6(a) hereof, PAETEC shall have the right on fifteen (15) days prior notice to immediately and without further notice suspend Services to Customer in the event of nonpayment by the Due Date of any charges not disputed in accordance with the provisions of Section 5.

7. TERMINATION LIABILITY.

a) If the Agreement is terminated anytime during the Term, Customer shall pay to PAETEC, immediately upon demand, (i) all sums then due and unpaid plus (ii) an amount equal to the Minimum Monthly Fee times the number of months left in the Term. No termination liability will apply in the event that the Agreement is terminated by Customer pursuant to Section 2 at the end of a Term or 6 above as the result of a PAETEC breach, however, in such event Customer shall be responsible for payment of all charges incurred prior to the termination date.

b) In the event Customer terminates the Agreement at any time during the period prior to commencement of the Term, except as permitted by Section 6 above, Customer shall pay to PAETEC, immediately upon demand, (i) all sums then due and unpaid the Services plus (ii) an amount equal to six (6) times the Minimum Monthly Fee.

8. LIMITATIONS OF SERVICE. Notwithstanding any other provision contained herein, this Agreement shall apply only to non-carrier services provided directly to Customer for use only by Customer. For the avoidance of doubt, Customer may not purchase services under this retail service agreement and resell services to end users. Resellers may only secure services from PAETEC under a wholesale service agreement. This Agreement also does not constitute a joint undertaking for Customer's furnishing of any service to its own customers. Services provided to Customer under this Agreement may be connected to other facilities between certain locations and thereby constitute a portion of end-to-end service furnished by Customer to its customers.

9. COMPLIANCE WITH LAWS. Each party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services. Without limiting the foregoing, all customers that utilize the Services for the purpose of making telephone solicitations must comply with the national do-not-call requirements, including the rules as set forth in 47 C.F.R. Section 64.1200 and 16 C.F.R. Part

310. Failure to do so shall constitute a material breach of the Agreement.

10. UNAUTHORIZED USE OF SERVICES.

a) Except as provided in subsection (b) below, Customer, and not PAETEC, shall bear the risk of loss arising from any unauthorized or fraudulent usage of Services provided under the Agreement to Customer. PAETEC reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof, provided, however, that any such action shall be consistent with applicable federal and state laws, rules, and regulations. In addition, as a condition of receiving the telecommunication services contemplated hereunder, Customer shall at all times order adequate trunking for Customer's call volume. In the event Customer's call trunking is inadequate to accommodate the call volume it is receiving at any given time then PAETEC may, at its sole option, restrict or block calls to the applicable circuits.

b) Notwithstanding the foregoing, Customer shall not be liable for unauthorized or fraudulent usage to the extent that (i) Customer has previously notified PAETEC of the problem; (ii) the problem was within PAETEC'S reasonable ability to correct or prevent, and (iii) PAETEC negligently or willfully fails to correct or prevent such unauthorized or fraudulent usage.

11. WARRANTY. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH COMMON CARRIER INDUSTRY STANDARDS, GOVERNMENT REGULATIONS AND SOUND BUSINESS PRACTICES. PAETEC MAKES NO OTHER WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PAETEC DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON PAETEC'S BEHALF AND THE CUSTOMER MAY NOT RELY ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF PAETEC. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

12. LIMITATIONS OF LIABILITY.

a) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR

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MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.'S

SUPPLEMENTAL RESPONSES

TO VERIZON'S FIRST SET OF DATA REQUESTS

QUESTIONS 20, 21, 22, 23, 24 AND 28

JANUARY 5, 2010

23. Has any state commission and/or state commission staff adopted, accepted, approved, agreed with or otherwise endorsed the contention that it is erroneous to conclude that a CLEC has bottleneck control over intrastate switched access service, as Mr. Starkey argues at pages 62-66 of his direct testimony? If so, please identify the proceeding(s) in which the commission(s) and/or commission staff did so, including the dates of relevant commission orders and/or staff testimony, if any.

McLeodUSA Response:

Neither Mr. Starkey nor McLeodUSA have undertaken research to identify the opinions of state commissions as required by the request. For example, it is unclear whether any of the states have ever gathered relevant evidence, addressed or even considered the issue.

McLeodUSA Supplemental Response:

McLeodUSA does not have information or records available to enable it to respond as to whether “any state commission and/or state commission staff adopted, accepted, approved, agreed with or otherwise endorsed the contention that it is erroneous to conclude that a CLEC has bottleneck control over intrastate switched access service, as Mr. Starkey argues at pages 62-66 of his direct testimony.” McLeodUSA objects to this request to the extent that it would require McLeodUSA to conduct research to obtain documents and information that is not within the possession or control of McLeodUSA or its attorneys or consultants. Without waiving this objection, McLeodUSA states that representatives of QSI Consulting have presented testimony making the same or similar argument referred to in question 23, in the proceedings listed below. The burden of conducting research to determine whether and, if so, how the state commissions or commission staffs in such proceedings responded in orders and/or testimony, respectively, to the testimony of the QSI representatives is the same for Verizon as it would be for McLeodUSA.

1. Massachusetts D.T.C. 07-9 (witness A. Ankum, adopting pre-filed testimony submitted by M. Starkey)
2. New Jersey BPU TX08090830 (witness A. Ankum)
3. FCC CC Docket No. 01-92, WC Docket No. 04-36 (witness M. Starkey)

McLeodUSA witness: Michael Starkey

24. Has any state commission or state commission staff declined to adopt, accept, approve, agree with or otherwise rejected the contention that it is erroneous to conclude that a CLEC has bottleneck control over intrastate switched access service, as Mr. Starkey argues at pp. 62-66 of his direct testimony? If so, please identify the proceeding(s) in which the commission(s) and/or commission staff did so, including the dates of relevant commission orders and/or staff testimony, if any.

McLeodUSA Response:

See response to 23 above.

McLeodUSA Supplemental Response:

See supplemental response to 23 above.

McLeodUSA witness: Michael Starkey

28. If McLeodUSA enters into written service contracts that contain early termination provisions, please (a) identify what percentage of such contracts contain such provisions, and (b) provide a template version of such contracts that contains a representative early termination provision.

McLeodUSA Response:

For purposes of this response, McLeodUSA assumes “early termination provisions” means the type of contract provision described in the response to question 27.

(a) McLeodUSA objects to subpart (a) of this question on the grounds that it would be unduly burdensome for McLeodUSA to review all its customer contracts to calculate what percentage of its contracts contain an “early termination provision”, and that the percentage of McLeodUSA’s customer contracts that contain an “early termination provision” is not relevant to the subject matter of this proceeding.

(b) Attachment VZ-28(b) contains an excerpt from terms and conditions currently used by McLeodUSA which include an “early termination provision” – see Sections 6 and 7.

McLeodUSA Supplemental Response to 28(a):

(a) Without waiving its objections as stated in the original response, McLeodUSA provides the following information:

First, not all customers of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, in Illinois are provided local services under a service agreement. In particular, all Residential customers are provided service on a month-to-month basis based on the terms and conditions set forth in the filed tariff. Since approximately 40% of McLeodUSA’s customer accounts are Residential accounts, this means that, at a minimum, 40% of McLeodUSA’s customers are not provided service under written service contracts that contain “early termination” provisions.

Second, with respect to non-Residential (business) accounts, McLeodUSA attempts to include provisions for a term length and for “early termination” payments in all new service contracts; however, such provisions may be and are eliminated or modified based on the particular facts and circumstances, including the customer’s bargaining power and the legal status of the customer. For example, many governmental entities (school systems, state agencies, city governments, universities, etc.), which represent a significant component of McLeodUSA’s customer base, do not have statutory authority to enter into service agreements covering more than their current fiscal year. Additionally, a non-Residential customer that completes the stated initial term of its service contract may thereafter continue service with McLeodUSA on a month-to-month basis, or enter into a new term of service. As of November 30, 2009, 72% of

McLeodUSA business customers have fulfilled their original term commitment, and, therefore, would not be subject to early termination charges should they switch to another local service provider. Every month additional business customers fall into the bucket of customers that have fulfilled their original term commitment.

As a result of the above-described factors, and other than the information provided above, McLeodUSA has no basis for developing an informed estimate of the number of its customers who are taking service under a written service contract that specifies a service term and contains "early termination" provisions, without reviewing each of McLeodUSA's approximately 7,900 non-Residential customer accounts to determine whether the customer entered into a written service contract that specifies a service term and contains "early termination" provisions, and if so, the current status of that contract (e.g., term has or has not expired).

McLeodUSA witness: None.

1. At page 12 of his Direct Testimony, Mr. Starkey lists three "primary considerations" that he recommends the ICC use to determine whether McLeodUSA's intrastate switched access charges are just and reasonable. Do these three considerations represent the complete set of considerations which Mr. Starkey believes the ICC should use to determine whether McLeodUSA's intrastate switched access rates are just and reasonable? If your answer is anything other than an unqualified "yes," please identify all additional considerations Mr. Starkey believes should be part of the standard by which the ICC should determine whether McLeodUSA's intrastate switched access rates are just and reasonable.

McLeodUSA Response:

No, as indicated by Mr. Starkey's use of the terms "primary considerations" and "guiding principles" at page 12 of his Direct Testimony. It is Mr. Starkey's opinion that the three "primary considerations" are, in the context of this case, the three most relevant considerations likely to yield a an informed decision on just and reasonable rates. While Mr. Starkey was not intending to limit the Commission's areas of consideration to these three areas, he has no other considerations to propose at this time.

McLeodUSA witness: Michael Starkey